amount of the judgment in foreign currency which will always be conclusive. As between the date of breach and the date of judgment, the former seems clearly preferable since the aim of the courts is to make the plaintiff as nearly whole as possible, and not to enable him to speculate in foreign exchange. And where as in the ordinary contract case performance of a duty is promised for a certain date, it may be, as the majority of cases seem to hold, that damages for the breach should be assessed at the current rate of exchange[13] as of that date, both in the interest of certainty, and because the plaintiff may take steps to protect himself against non-performance.

But where, as in the tort cases, the breach of duty is unexpected, it may be unfair not to allow the plaintiff a short period to protect himself. There is a rule of damages, of fairly wide acceptance in this country, that on conversion of articles of fluctuating value, particularly stock,[14] the plaintiff should have a reasonable time in which to replace the converted articles, and his damage is therefore computed at the highest value of the articles within a reasonable time after he has notice of the breach. A similar rule applied here would lead to the selection of the date when plaintiff reasonably might have repaired his vessel. While this rule is not definitely applied in the principal case and in other similar tort cases, the result seems to approximate it.[15]

LIABILITY OF AN INFANT FOR FRAUDULENT MISREPRESENTATION

"Infantile Paralysis" is a term well applicable to the state of the law governing an infant's responsibility for his contractual and tort obligations. The rigid niceties involved are indeed perplexing. Infancy has ever been a safe base from which one might embark upon piratical expeditions against innocent adults and to the technical defences of which he could return for security. Shall its sanctity be preserved when justice obviously requires a remedy for the victims? In *Falk v. McMasters & Co.* (1921) 197 App. Div. 357, an infant had deposited money with brokers for stock margin and then sought to recover his loss from an investment made pursuant to his directions. The ground of recovery was infancy at the time of deposit and at the time of bringing suit. The brokers' defence, sustained by the court, was that the infant had induced them to contract with him by falsely and fraudulently misrepresenting his age. While the weight of authority seems to be that an infant is not estopped from using his infancy as a shield against obligations under a contract induced by his fraud,[1] there is a

[13] In a few old cases the par of exchange was applied. *Adams v. Cordis* (1829) 25 Mass. 260; *Martin v. Franklin* (1809, N. Y. Sup. Ct.) 4 John. 124.

[14] *Galligher v. Jones* (1889) 129 U. S. 193, 9 Sup. Ct. 335.

[15] Cf. McNair, *Rate of Exchange in English Judgments* (1921) 37 L. QUART. REV. 38.

[1] Where the contract is executory, the decisions are practically uniform that the defence of infancy is not lost. *Sims v. Everhardt* (1880) 102 U. S. 300; *Tobin*

respectable minority to the contrary.[2] Reason and logic are clearly with this latter view. The instant decision, recognizing refinements of reason and distinctions of logic independent of precedent, is indeed refreshing. Iowa and a few other states have already seriously disturbed the traditional privileges of infancy,[3] and it is hoped that still others will do likewise. There is no insuperable difficulty involved, for although the weight of authority at law is as stated, an infant stands in a very different position in equity.[4] When he has fraudulently misrepresented his age so as to procure others to contract with him, he will not be heard to plead his infancy to the prejudice of another.[5]

The tort liability of an infant, in law and in equity, is that he is generally as responsible for his torts as an adult.[6] The English courts,[7] however, and many American courts,[8] deny such responsibility where the cause of action is so directly connected with a contract that to permit the action on the tort would be an indirect way of enforcing the contract. So when an infant has induced an adult to contract with him through fraud and misrepresentation of his age, and a tort action for

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v. Spann (1908) 85 Ark. 556, 109 S. W. 534; *International Text Book Co. v. Connelly* (1912) 206 N. Y. 188, 99 N. E. 722. Where it has been executed, there is a conflict, but the weight of authority holds that the infant is not estopped. *Wieland v. Kobick* (1884) 110 Ill. 16; *Ridgeway v. Herbert* (1899) 150 Mo. 606, 51 S. W. 1040.

[3] *La Rosa v. Nichols* (1918) 92 N. J. L. 375, 105 Atl. 201; *County Board of Education v. Hensley* (1912) 147 Ky. 441, 144 S. W. 63; *Lake v. Perry* (1909) 95 Miss. 550, 49 So. 569.

[4] Iowa Code, 1897, secs. 3189-3190: "A minor is bound not only by contracts for necessaries but also by his other contracts unless he disaffirms them within a reasonable time after he attains his majority. . . . . No contract can be thus disaffirmed in cases where on account of the minor's own misrepresentations as to his majority or from his having been engaged in business as an adult the other party had good reason to believe him capable of contracting." *First National Bank v. Casey* (1912) 158 Iowa, 349, 138 N. W. 897.

[5] See Tiffany, *Law of Persons and Domestic Relations* (2d ed. 1909) 434.

[6] Equity will not give to such an infant affirmative equitable relief. *Ex parte Unity Joint-Stock Mut. Packing Ass'n.* (1858, Ch.) 3 De Gex. & J. 63; *Hayes v. Parker* (1886) 41 N. J. Eq. 630, 7 Atl. 511; *Rice v. Boyer* (1886) 108 Ind. 472, 9 N. E. 420 (under reformed procedure, the equity rule on this subject appears to have supplanted the legal rule); *La Rosa v. Nichols, supra* note 2. Nor will his plea of infancy be sustained as a defence when sued in equity by an adult. *Lempriere v. Lange* (1879) L. R. 12 Ch. Div. 675; 2 Pomeroy, *Equity Jurisprudence* (3d ed. 1905) secs. 815, 945.

[7] 1 Cooley, *Torts* (3d ed. 1906) 177.

[8] This really amounts to denying such responsibility where the tort has any connection whatever with an infant's duties under a contract. *Johnson v. Pye* (1793, K. B.) 1 Lev. 169; *Price v. Hewett* (1852) 8 Exch. 146; *Liverpool etc. Ass'n. v. Fairhurst* (1854) 9 Exch. 422; *Bartlett v. Wells* (1862, Q. B.) 1 Best & S. 836.

[9] *Carpenter v. Carpenter* (1873) 45 Ind. 142; *N. Y. B. L. B. Co. v. Fisher* (1897) 23 App. Div. 363, 48 N. Y. Supp. 152; *Nash v. Jewett* (1889) 61 Vt. 501, 18 Atl. 47; *Covault v. Nevitt* (1914) 157 Wis. 113, 146 N. W. 1115; *Spangler & Co. v. Haupt* (1913) 53 Pa. Super. Ct. 545.

deceit is brought, the plea of infancy has been available to the infant on the ground that the cause of action for deceit arose *ex contractu*. Such a rule is artificial and arbitrary.[9] With the exception of those purely personal, all torts of infants have some connection, either directly or indirectly, with a contract; and to follow the rule just stated would in effect deny the responsibility of an infant for fraud and misrepresentation in practically every case, an exceedingly undesirable result.[10] It is difficult to see how an infant is deprived of all defences, which public policy may require, by permitting a cause of action for deceit for having induced an adult to contract with him through fraud and misrepresentation. Such acts are entirely unconnected with the terms of the resulting contract except that the latter were induced by the former; and to hold the infant in tort for deceit can hardly be said to be holding him to the terms of the contract. Here, too, there has been a decided tendency in recent years to hold an infant in tort even though it consists entirely in fraudulently inducing an adult to contract with him.[11] Despite conflicting tendencies in various jurisdictions, it is becoming increasingly evident that courts of law are gradually coming to hold an infant to a stricter accountability for acts of fraud and misrepresentation against innocent adults acting in good faith, as has been true in equity for some time.[12] All of which is as it should be.

The necessity of accurate legal phraseology is becoming more apparent and more frequently asserted every day. Thus, we find Mr. Justice Holmes recently saying that "the word 'right' is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion."[1] An accepted definition of so essential a concept is imperative.[2]

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[9] X, an infant, misrepresents his age to A, an adult, who then contracts with him. X purchases a machine from A, who has taken advantage of X's business inexperience and charged him four times the real value. X, upon learning this, returns the machine, now in a dilapidated condition, and sues and recovers the purchase price from A. A thereupon brings an action in tort for deceit against X. The measure of damages is, clearly, the actual loss suffered by A as a result of X's misrepresentation, and not four times the value of the machine. It cannot be said, therefore, that to allow such a cause of action would be indirectly enforcing the original contract.

[10] *Fitz v. Hall* (1838) 9 N. H. 441.

[11] *Fitz v. Hall, supra* note 10; *Rice v. Boyer, supra* note 5; *Wallace v. Morss* (1843, N. Y.) 5 Hill, 391; *Eckstein v. Frank* (1863, N. Y.) 1 Daly, 334; *Patterson v. Kasper* (1914) 182 Mich. 281, 148 N. W. 690.

[12] *La Rosa v. Nichols, supra* note 2.

[1] See *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta* (May 16, 1921) U. S. Sup. Ct., Oct. Term, 1920, No. 679.

[2] See Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1913) 23 YALE LAW JOURNAL, 16; (1917) 26 *ibid.* 710; Corbin, *Legal Analysis and Terminology* (1919) 29 *ibid.* 163.